

## ***9 Official Opinions of the Compliance Board 256 (2015)***

- ◆ 2(A) NOTICE – GENERALLY: USE OF STANDING NOTICES
- ◆ 2(F) NOTICE, TIMING: POSTING OF NOTICE SHOULD NOT BE DELAYED IN ORDER TO INCLUDE AGENDA
- ◆ 6(1) MINUTES: ADOPTION OF WRITTEN MINUTES REQUIRED WHEN VIDEO SYSTEM MALFUNCTIONED

\*Topic numbers and headings correspond to those in the Opinions Index (2014 edition) at [http://www.oag.state.md.us/Opengov/Openmeetings/OMCB\\_Topical\\_Index.pdf](http://www.oag.state.md.us/Opengov/Openmeetings/OMCB_Topical_Index.pdf)

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August 20, 2015

Re: Frederick County Historic Preservation Commission  
*Kimberly Mellon, Complainant*

Kimberly Mellon, Complainant, alleges that the Frederick County Historic Preservation Commission violated the Open Meetings Act with respect to its December 3, 2014 meeting on whether a particular property should be designated as historic. Complainant alleges two violations: a failure to give “reasonable advance notice,” as required by § 3-302 of the General Provisions Article,<sup>1</sup> and a failure to adopt minutes in a timely manner, as required by § 3-306(b). The Commission responded to those allegations and provided information in response to our staff’s questions.

The complaint also contains allegations about the Commission’s practices with regard to the posting of materials on its website and about Complainant’s efforts to inspect County permit files that are apparently maintained by a County permits department. Because the Act does not regulate these matters, we lack the authority to address them.

### ***Notice***

The Act requires public bodies to give “reasonable advance notice” of their meetings. § 3-302(a). While meeting notices may be posted in a variety of ways, they must, at a minimum, “include the date, time, and place of the session.” § 3-302(b). The Commission gave notice with that content one

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<sup>1</sup> All statutory references are to the 2014 volume of the General Provisions Article of the Maryland Annotated Code.

week before the meeting and in two ways recognized by the Act. The question here is whether that notice was given “reasonabl[y]” in advance. In assessing timeliness, we have stated that “the touchstone of ‘reasonableness’ is whether a public body gives notice of a future meeting as soon as is practicable after it has fixed the date, time, and place of the meeting.” 5 *OMCB Opinions* 83, 84 (2006).

The Commission’s standing website notice announces generally that the Commission holds regular meetings “on the first Wednesday of each month 8 to 10 times per year.” The standing notice does not address particular meetings and so did not state that December 3, 2014 would be one of those Wednesdays. It also does not specify the time and place of the Commission’s meetings. The agenda issued before the Commission’s November 5, 2014, meeting did announce that the Commission would meet on December 3; it specified the location, but not the time. From November 15 on, the property in question was posted, presumably by the property owner, with a notice on the Commission’s form. That notice specified the time, date, and place, but it was not given by the Commission, and it was not posted in a place where the public would generally expect to find the Commission’s notices. Finally, on November 25, 2014, the Commission posted on its website an agenda that specified the time, date, and place of the December 3 meeting. Also on November 25, staff posted a copy of the agenda at the County’s Community Development Division offices. In short, by November 5, the Commission knew the date, time, and place of the meeting but did not post notices with all of that required information until November 25, one week before the meeting.

Despite the Commission’s evident delay in posting a complete meeting notice, this does not appear to be a matter in which a public body has intentionally delayed giving notice in order to keep the fact of a meeting secret. After all, the Commission met on its regular meeting day, provided the full information a week in advance, and had already disseminated some information that confirmed the meeting date. So, when we view the November 25 notices in context, we are reluctant to declare that the Commission violated the Act, especially because it appears that the Commission includes agenda information—more information than the Act requires. Still, the publication of complete meeting information only one week before a meeting that had long been scheduled, especially when that week included the Thanksgiving holiday, was hardly ideal.

For suggestions on how the Commission might modify its standing meeting notice to meet the goals of providing complete meeting notice sufficiently in advance and (commendably) providing agenda information, we refer the Commission to our opinion in 9 *OMCB Opinions* 206 (2015). There, we approved the use of a standing notice in conjunction with an agenda. That public body’s standing website notice generally alerted the public to the public body’s meeting dates for the year and gave the probable

location, and it also instructed the public that the agenda would be posted within five to seven days of each meeting. The agenda then confirmed the meeting details and included information on what the public body would discuss.

**A. *Minutes***

As relevant here, the Act requires the public body to provide minutes in the form of either “live and archived video or audio streaming” or else written minutes, which must be prepared as “soon as practicable” after the meeting. § 3-306(b). The County’s website shows that the Commission has sometimes streamed the video of its meetings, and those videos are posted. On December 3, 2014, the County’s video technology was being upgraded, and those services were not available, so staff turned to the audio system in order to make an audio recording available. It appears that staff learned about five months later that nothing had been recorded. Staff then prepared written minutes and provided a draft to Complainant in May 2015 when she asked for them. In the course of responding to our staff’s request for the date on which the Commission adopted the draft as its minutes of the session, it was discovered that the Commission in fact has not done so yet.

The County Attorney states that staff will now check audio recordings promptly to ensure that the system worked and that the Commission will now adopt minutes at each successive meeting. We find that the Commission violated the Act by failing to adopt its written minutes in a timely manner, we approve of the steps that it will now take to avoid such violations, and we encourage the Commission to adopt the minutes sooner than its next meeting, unless that process will involve a substantive discussion that should occur in an open meeting. *See 8 OMCB Opinions 176, 177-78 (2013)* (addressing circumstances in which it might be appropriate to adopt minutes by circulating them among the members).

***Conclusion***

We have made suggestions on how the Commission might modify the standing notice on its website so as to ensure that the public knows how to find complete information about its meetings. We have found that the Commission violated the Act by not timely adopting the draft minutes of its December 3 meeting. We have not addressed the allegations that concern the Commission’s posting of documents on its website and the Complainant’s efforts to inspect a permit file, because those allegations do not state violations of the Act.

Open Meetings Compliance Board

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